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The Curious Case of Care and Restorative Justice in the U.S. Context

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"9 out of 10 Nursing Homes in U.S. Lack Adequate Staff, a Government Study Finds" is the title of a recent article in the *New York Times*.¹ The reported study, ordered by the U. S. Congress in 1990 and prepared by the Department of Health and Human Services, concludes that 90% of U.S. nursing homes have too few workers to provide "minimally necessary" care and that nursing homes with a low ratio of nursing personnel were more likely to provide substandard care that endangers life and health of residents. Yet the report considers minimum staffing ratios "not currently feasible" because of costs. The Bush administration agrees, rejecting minimum staffing regulation in favor of publishing data on staffing levels so that an "informed public" can create the "market demand" for better nursing home staffing.

The report and coverage of it are unexceptional in exhibiting the stark absence in U.S. political culture of a discursive and moral framework of care. Even in a context where talk of "care" is descriptively unavoidable – providing for the sick and frail aged – talk of care as a value, obligation, or responsibility is absent. Instead, the report and the newspaper article repeatedly articulate the situation in terms of unacceptable cost, economic realism, and individual responses to market forces as a solution. Those elderly needing care are positioned as a *costly social problem*, and the *Times* inserts the alarming fact that the 85 and older population will double by 2030. There is a pattern here. The "welfare to work" agenda of the 1990s in the U.S. acquiesced in framing the "welfare mother" – not poverty,

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inadequate social support, bad schools, lack of affordable and reliable childcare, runaway male incarceration in nonwhite race groups – as a social problem that had become too expensive to tolerate. In recent years “education” is retooled as a mainstream and cost-free political bandwagon implemented through standardized testing that ignores growing levels of child poverty in the U.S. So too inadequate nursing homes – another paradigmatic “care” problem – become a target for economic containment strategies rather than a trigger of moral shame.

And yet there is an area of activity, experiment, and activism in the U.S. that crosses public and private boundaries where not only are care *values* invoked but care *discourse* is made central, and where these values and their discursive frame seems politically acceptable and even popularly digestible. The area is *restorative justice* as an ethical vision and a set of practical strategies for dealing with victims and offenders of crime and their communities. Restorative justice, even though marginal, seems to be rising in visibility and in persuasiveness even as incarceration in the U.S. has soared to unprecedented levels. It is entering mainstream thinking both from the bottom-up efforts of private organizations and advocates and from the top-down institution of state programs to deal with criminal offenders and victims of crime.

I will use this case to open a discussion of why the an ethic of care seems to have achieved expression in such unexpected quarters even as it remains largely excluded from the U.S. public figuration of social and political problems that are seemingly more obvious sites for normative discussions of care – the needs of vulnerable children, the physically and mentally ill, the sick and frail elderly. Where these “care” problems are not represented largely in terms of economic calculation – that is to say, where they are represented in moral terms at all – they are most likely to be shaped by appeals to rights: the rights of children, rights to health care, rights to dignity in old age. Yet in the domain of spreading restorative justice practice one hears repeatedly about the *needs* of the victim, the offender, and harboring communities; the importance of *empathy*, *attention*, and the candid expression of *feeling*; and the importance of sustaining and repairing human relations in an environment where victims and offenders are supported by their *communities of care*.

I begin looking at some identifying commitments of care ethics, attempting not to elevate one particular version but to focus themes and language that reveal care thinking.² I then turn to a brief look at some of the theoretical and practical activity in the growing area of restorative justice as an approach to crime, exploring how the clearly moral language that legitimates restorative justice programs is, rather surprisingly, a language of care. Finally, I raise some questions about the complexities of how an ethical discourse of care is marginalized and deflated by its gendered associations in its most obvious sphere, but is also eclipsed or captured by communitarian, therapeutic, and religious discourses that can deflect the potential of care ethics to assume its role as a public moral discourse.

In all this, I do not suggest that the perspective of care ethics enjoys more than a liminal existence in U.S. public life. In fact, my hypothesis is that the saturation of the restorative justice movement with care discourse is an exception that proves the rule, while helping to illuminate what the rule is. Care language can find public expression where it is not identified as such, nor identified with traditionally feminized arenas of care. Care discourse is excluded from those areas where it threatens to spill the "private" sphere into the public one just where the particular public/private boundary in question is one that has been historically, and continues largely to be, *gendered*. Where care language carries the load of the sentimental, feminine, servile, and domestic spheres, it is not serious discourse for public policy debate in the U.S. In the area of criminal justice policy, heavily gendered masculine in its target population (male offenders), its personnel (criminal lawyers, judges, corrections official, prison personnel), and its public imagery (crime as a male domain and a hypermasculine behavior), care language is marginal but can be entertained as an "alternative philosophy." Even there, however, the philosophy in question is virtually never identified with "care ethics," but most commonly with a (loosely) communitarian and/or explicitly religious frame. In some instances, ideas and practices that embody care values are celebrated as a legacy of indigenous cultures, now a benefit of a multicultural society that can learn from people and lifeways it once attempted to exterminate.

The "Information Base" of Care Ethics

Substantive affinities between an ethic of care and an ethic of capabilities have been noticed, by political theorist of care Joan Tronto and philosopher of dependency work Eva Kittay.³ Here I borrow a methodological rather than a substantive idea employed by economist and capabilities theorist Amartya Sen. In *Development as Freedom* Sen contrasts theories of justice by examining the "information base" that they select as decisive for addressing the problems that they would answer.⁴ For example, utilitarians seek to answer questions of social policy by directing attention to subjective satisfaction or the fulfillment of preferences, while Rawlsian theory focuses on liberties, income, and self-respect as primary goods in addressing the justice of societies' basic institutions. Sen emphasizes that identifying the information base of moral theories -- the considerations they make relevant and irrelevant in deciding moral issues -- can be crucial in testing the scope and adequacy of theories in response to a question like "What is a just society?"

Identifying the information base of divergent theories is also, however, a useful way to reveal that theories that superficially appear to be answering the same question from different views of the same subject matter at hand are often in fact constructing *different subject matters* for our view. In the political deployment of moral discourses, this is especially important to notice. Often what is politically decisive is whether a certain kind of consideration or problem can be made visible as something to be concerned about before any substantive normative conclusions about it are reached, before political positions on it are hardened as "issues," or before decisions of policy about it are taken. The constitution of subject matters for moral and political concern, and the replacement or displacement of some subject matters by others, are a powerful process in sustaining what philosopher Cheshire Calhoun has called "ideologies of the moral life," those non-logical implications of styles of theorizing or discussion that make some questions and considerations seem inevitable, important, or natural and make others seem exceptional, deviant, secondary, or unimportant.⁵

Using this lens, how might we characterize the information base of care ethics in addressing questions about a just and morally responsible society?

I suggest that care ethics can be seen (without adopting one particular formulation of it) in terms of three key facts and four central value commitments. Call the first fact the *fact of dependency* as an inevitable feature of the human cycle of life; all begin in radical and fragile dependency, all experience it in times of illness, weakness, and disability during life, and all who grow old enough are very likely to return to it as an ongoing way of living. Call the second fact the *fact of vulnerability* as an unavoidable feature of human beings' fragile bodies and feelings. Both of these are features that social arrangements can render more or less threatening or fearsome to human beings by providing forms of care and protection. Call the third the *fact of interdependence* as an ineliminable feature of human social existence. As we are dependent upon others for our very survival at the outset and at many times in our lives, we are dependent on many others throughout our lives for the necessities and amenities of a tolerable or a good life. Social divisions of labor and social ties and memberships make possible much of what any of us values beyond bare survival, while specific modes of social organization and cultural norms make only certain forms of interdependence visible and valued. These three facts encompass the primary information base of care ethics, which is tapped by the question: what do people need from each other to live well in the world?⁶

As a perspective on moral value, with directive force for individual choices and for social institutions and political policies, care ethics elevates four goods: responsiveness to human needs; responsibility and competence in meeting needs; valuing of connection and relationship itself; and valuing of caring labor and activities. In the face of dependency, vulnerability, and interdependence as our unalterable human condition, care ethics holds individuals and their societies responsible for attending to, assessing, and weighing responsibilities for human needs and for acknowledging our needs for each other. Care ethics affirms the dignity and profound importance of our efforts to meet human needs, most so those needs at stake in conditions of vulnerability that threaten survival or in relations of dependency on which survival and health depend. While these values need not be seen as comprising a complete ethics, care ethics sees these as values without which no ethical vision is adequate or, more strongly, humanly sane.⁷

This leads care ethics to identify as fundamental problems of justice the distribution of caring (who gets taken care of), the distribution of responsibilities to engage in caring labor (who gives care), and distributions of the social resources and protections available to care-givers and those needing care (on what terms of burden and reward people give and receive care). These problems have often, bizarrely, not been treated as moral issues at all, or have been bifurcated into "realms" or "spheres" which elevate the executive functions of organizing care-delivery (as in the modern welfare state) to the status of issues of "public" justice, while demoting actual care-giving to the "private" sphere of unskilled, low-waged or unpaid work that must get done but is not worth paying (much) for.⁸ Care ethics, however, need not be restricted to those activities that are seen as "care-giving" in the most stereotypical sense. As Selma Sevenhuijsen says, "practically all human behaviour carries aspects or dimensions of care."⁹ Rather, the vision of care ethics is one of "a *relational* ethics which places the highest value on the promotion, restoration, or creation of good social and personal relations and gives priority to the needs and concerns of 'concrete' [i.e. particular]...others," in Fiona Robinson's words.¹⁰ Flexible attentiveness to the individual case, mindfulness of and responsiveness to needs of particular human beings, valuing relations of interdependence and the activities of care that sustain them, are marks of care values in all contexts.

An Unexpected Arena for Care Ethics

Care language and values are largely absent in contemporary public, politically authoritative discussion in the U.S. in those contexts where one would naturally expect them to have some weight.¹¹ At the same time a *restorative justice* movement has emerged within and around the U.S. criminal justice system, and this movement, in both its governmental and nongovernmental forms, speaks a language that is in fact, whatever its origins, identical to the language of care. It is not the case that care ethics has been the chosen framework for the development of restorative justice ideas and ideals. Rather, the case of restorative justice is interesting to reflect on because it is an (increasingly) institutionally recognized and legitimate discourse with some significant practical impact that is organized around moral ideas indistinguishable from care thinking. A care-based approach achieves

at least the legitimacy of a *practical policy alternative* in the U.S. criminal justice domain.

Although many became aware of the idea of "restorative justice" through world-wide interest in South Africa's Truth and Reconciliation Commission, the concept of restorative justice already had a history in criminal justice practice two decades before. Innovations in the form of victim-offender conferences seeking offender accountability and restoration of victim losses began in Canada and U.S. in the mid 1970s.¹² Once the concept was in play, it steered attention toward varied social practices in many cultures, some of them ancient, that fit the basic idea.¹³ New Zealand's extensive family conferencing program was based explicitly on long-standing practice of Maori culture; sentencing circles in Canada and the U.S. embody First Nations practices in Canada and have been adopted in some African-American communities; the Navajo Peacemaker Courts in Arizona continue or revive pre-conquest practices of communal deliberation under the direction of a respected individual.¹⁴ Immarigeon and Daly helpfully survey multiple "streams" of thought and activism that have flowed into restorative justice practice, including victims' and prisoners' rights movement, feminist activism on rape and domestic violence, the ascendance of mediation and alternative dispute resolution, indigenous traditions, the peacemaking practices of religious communities, and popular sentiment. All sought more responsiveness to victims, or less incarceration and more genuine accountability in the case of (at least non-violent) offenders, or more community representation, or more than one of these.¹⁵

Restorative justice is an international movement in theory and practice that is also thriving in the U.S. An extensive system of Reparative Probation Boards exists in Vermont and websites for agencies of the states of New Jersey, Pennsylvania, Minnesota, and Michigan advertise their restorative justice ventures. The state of Arizona, with its deserved reputation for tough penal practices has just revamped and renamed its Victims' Rights Program as the "Office of Restorative Justice" to emphasize policies that involve crime victims in the process of dealing with juvenile offenders. Academic conferences and training courses for restorative mediation can easily be found on the web, as can nongovernmental and religious organizations that advance restorative justice, like the Mennonite Central Council (an

originator of U.S. victim-offender reconciliation programs), the Formation and Justice Ministries of the United Methodist Church in Missouri, or the Victim offender Mediation Association, a network of theorists, researchers, and practitioners.¹⁶ Restorative justice is a banner both for inventing and adopting new programs for dealing with the aftermath of crime (as well as other community or school discord and violence) in ways other than, or in addition to, punitive measures. Restorative justice framing also gives a fresh face, and perhaps a slightly different meaning, to some existing programs, like community policing or victim-witness assistance.

Although there are differences of philosophy and practice within restorative justice networks and programs, the key ideas are quite uniform. A concise definition of restorative practice by Bazemore and Walgrave is: "restorative justice is every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime."¹⁷ Crime is understood as a concrete harm to specific persons and to their communities, and restoration has material, emotional, and moral dimensions. The contrast, which is usually explicit and always implied, is with a retributive criminal system that gives the offender, at best, what is "deserved" in the way of punishment according to a system of pre-calibrated punishments for scaled offenses, and typically gives the victim nothing but the possible satisfaction of seeing the offender punished. Restorative justice is committed to putting the repair of harm done by crime in the hands of the "stakeholders," defined as the victims, the offender, and their "communities of care."

Restorative justice is typically done through court-administered or police-run programs where authorities linked to the criminal justice system orchestrate forms of conference between offenders, victims, and in some cases families or representatives of affected communities. The scene of restorative justice is a meeting or conference among these "stakeholders" in various combinations. Participation in restorative programs is ostensibly voluntary on the part of the principals, and the function of the meeting is to repair damage by doing at least some of the following: hearing the experience of victims (and communities) about the concrete harms of crime, allowing offenders to take responsibility for the offense, providing information, explanation, apology and offers of reparative action, arriving at an

agreement about the course of action to be taken to repair the harm.¹⁸ The substantive values of restorative practice are repair and "healing." Restorative justice programs are most popular (and one assumes, politically acceptable) for juveniles, but adult and (in some cases) violent offenders may also be considered candidates for restorative intervention. Restorative programs in criminal justice systems presuppose the offender has admitted guilt, and may be a diversion from a court process or an adjunct or sequel to trial; in some cases they may be available to those already incarcerated.

What is striking is the language used consistently in both theoretical writing and practical contexts in discussing restorative justice practice. The focus of restorative practice is the *needs* created by the fact of a harm or crime and a corresponding *obligation to respond* by addressing those particular needs; the importance of *direct, attentive* (sometimes *respectful* or *compassionate*) listening and expression (ideally, face to face) between parties to the harmful event; the opportunity for the offender to *take responsibility* and *directly respond* to the victim's anguish, anger, fear, and suffering; and the assumption that parties to the process will arrive at a solution that does justice in the *particular* case at hand without supposing that the resolution of a restorative intervention must conform to an antecedent rule or be replicated in like cases.¹⁹ Sullivan and Tift describe restorative justice as a "needs-based conception of justice" and literature on programs often speaks of balancing needs of victims, offenders, and communities. It is also about human relations which individuals have powers to break and repair, rather than rules or laws the transgression of which "belongs" to the State.²⁰ The process emphasis is on direct expression and acknowledgment of needs and feelings, the substantive emphasis on accountability and concrete response that addresses needs, material, emotional, and moral, and in which victim and offender often literally address each other. In conferences that involve communities – often referred to as "communities of care" – communities are expected to provide support within a context that does not blur the roles of victim and offender, but that allows the offender an opportunity to assert agency and competence by taking responsibility for making a meaningful reparative response to the victim. This often includes apology as well as some attempt at restitution or symbolic amends. The substantive value of "restoration" in restorative justice rests heavily on what

victims, offenders, and communities see as repair, but the structure of restorative practices makes clear that *connection* among the parties, and where possible *reconnection* of people within their communities (sometimes called *reintegration* for offenders, following Braithwaite) is the ideal (if not always available) end of restorative justice practice. It thus sets itself in opposition to the alienating, distancing, and depersonalizing effects of an adversarial criminal process that treats crime as an offense against the state, that encourages offenders to deny responsibility, that exiles offenders through incarceration and stigmatization, and that excludes offenders from an active role in "setting things right," making them spectators to the harm they have done and even to some of its consequences for them.²¹

The keynote themes of care thinking are pervasive in restorative justice literature and practice. Restorative justice practice, of course, is a tiny patch on the huge and still swelling incarceration industry into which the U.S. criminal justice establishment has metastasized. Annual expenditures on prisons have increased more than 500% in the last two decades, and state prison budgets are growing in the U.S. while social services are being cut.²² The U.S. currently incarcerates more people than any other country in the world, including mainland China. A large majority of those incarcerated are nonviolent offenders.²³ Racism is rampant in this "justice" system. By 1994 it is estimated that one of every three Black males between 18 and 34 years in the U.S. was under some form of correctional supervision.²⁴ No doubt one of the factors driving interest in alternative models of dealing with crime is precisely the frightening growth, expense, racism, and inhumanity of this system. But why has care ethical thinking managed to get a hearing, and more than that, a hold (even if experimental) in this field? What can we make of this?

Some Speculations about U.S. Resistance to Care Talk

The case of restorative justice shows that the values and points of focus of care ethics can in fact become a legitimate and legitimating discourse in a significant area of public policy in the U.S., even if its impact is relatively slight. This has not happened because these practices and rationales are labeled or promoted as "an ethic of care." Researchers on the origins of restorative justice theory and practice

acknowledge some contribution of women's movements and feminism to restorative thinking, but no one considers this more than a slight, and perhaps indirect, contribution, and that contribution may well be through feminist uses of "rights" discourses, rather than care ethics.²⁵ It seems few researchers have explored this link or deployed care ethics as a main theoretical rationale.²⁶

Restorative justice thinking has been fed by many streams, including community policing movements, victims' rights movements, religious organizations, and communitarian thinking. Restorative justice practice embodies a robust and consistent version of care ethics even though it rarely appears under that description. Its language of "community participation," of "needs of the victim," of the "competence" and "accountability" of the offender, of the goal of "restoring victims, offenders, and communities," can be heard in various registers, ideologically and practically, and perhaps this is important. There is no sense that the values are "feminist," where the latter term continues to arouse prickly, defensive, and derisive feelings in many quarters in the U.S. One might then say that care ethics, in the U.S. context, works best by another name, or in tandem with other perspectives that are more acceptable to a broad U.S. public. Certainly a broad U.S. public is responsive to talk based on ostensibly Christian values. Perhaps more importantly, Christian and communitarian perspectives embody values that do not seem threatening, suspect, or too "radical" in the U.S. social imaginary. Christian religious appeals and communitarian language generally are comfortable ones for most Americans. At any rate, these frameworks appear politically viable to (still overwhelmingly) white male Christian middle-class lawmakers, administrators, and bureaucrats. For this reason, these orientations are able to carry legitimacy, and their acceptance by those in power reinforces whatever legitimacy they possess in the first place.

In a different way, so does the idea of indigenous tradition carry some appeal. Of course, honoring or reviving indigenous traditions of peace-making and communal harmony have independent importance as they embody respect for peoples and cultures long subjugated and actively threatened with extermination. Restorative justice programs rooted in local or traditional indigenous practice can thus be ways to affirm forms of self-determination and control for these populations.²⁷ Also, for a political and criminal justice establishment premised on

Euro-American liberal individualist and modern statist culture, indigenous ideas and values that emphasize community and participation can be seen as refreshingly new and useful alternatives for the dominant culture. Perhaps these ideas derive some appeal when they are seen as benefits of "multiculturalism." The idea of multiculturalism has become at least familiar and has positive associations for many white Americans of European descent, even if these same citizens are not familiar or comfortable with the *people* whose cultures supply this diversity, much less with the idea that Native peoples are minority nations, rather than a minority group.²⁸

Compared to the Christian, communitarian, and even multicultural appeals of restorative thinking, my guess is that its feminist credentials are unimpressive or worse. A discourse that can be identified as feminist is still likely to evoke a defensive backlash in a U.S. context; at any rate it will be easily labeled as socially or politically "radical." It is important to clarify my point: I do not mean to say that what is "really" going on here is care ethics, not communitarianism, or the traditions of indigenous people, or the religious values of faith communities. Instead, what we see is a remarkable overlap among moral views that in *various* ways repudiate aspects of liberal individualist, formal universalist, and theoretical-juridical understandings of morality and society.²⁹ My point is not that restorative justice uniquely requires or exhibits a care ethics perspective, but that it shows that values wholly consistent with and central to that perspective can get a hearing that they do *not* necessarily get when advanced *as* care ethics.

It need not be, of course, that restorative justice practices are being adopted *because* of the caring, or communitarian, or Christian, or indigenous values that support them. Practices gain currency and are seen as institutional options for many reasons, and perhaps for different reasons by different interested parties.³⁰ The question here, however, is not about the actual political conditions, social forces, and distributions of power that explain the adoption of restorative justice practices, although that is an important question, and one on which the success of institutionalizing restorative justice programs is likely to depend. The issue I am exploring is the relative acceptability and effectiveness of different discourses as *legitimizing* ones in a *public* sphere, in this case, the contemporary U.S.

Whatever the actual reasons for the adoption of certain practices, some languages of value and justification are found acceptable and effective in presenting and justifying these practices to the public, or are offered as the terms in which policy options are to be understood by the public. The question I have been asking here is, why do care language and values (under whatever banner) qualify as legitimating with respect to restorative justice practice, making their way onto websites and into state-manufactured pamphlets, but remain relatively ineffective and unlegitimizing in their more obvious areas of application to the care of the young, the frail, the sick, or other dependent persons? There are really two questions here. One is: why does care language get a successful grip in the case of restorative justice, when it does not seem to do so elsewhere, including in the more obvious realms of application? I have already suggested that the language and values of care used to couch rationales for restorative justice can be and are actually subsumed under politically safer or more acceptable evaluative outlooks that share care language and values. The second question is: Why is care language often ignored or spurned in those more obvious realms? Couldn't it achieve some stature there, if perhaps under different descriptions, as in the restorative justice case? In response to this, I focus on two linked factors. On the one hand, there is a special "contamination by the feminine" that is unavoidable for caring discourse in its more obvious realms of application, for these areas of needs for care and caring remain, in reality and perception, largely associated with women and (so) with the "private" sphere. At the same time, there is a real threat – social and economic – that care thinking represents to the gendered and raced division of labor that has allowed U.S. society to continue to "ride free," or at least artificially cheaply, on the strained and inadequate but private (that is, domestic or privately paid) provision of care in these most obvious spheres.

These two factors—a symbolic contamination and a real threat might explain rejection and delegitimation in the U.S. public sphere of the discourse of care precisely where it is applied to still deeply feminized spheres." Care talk addresses the still conspicuously gendered sectors of what Eva Kittay calls "dependency work," paid and unpaid, which work is also historically "raced and classed" in Joan Tronto's phrase.³¹ That is, care talk is more alarming personally, socially, and institutionally when it threatens to breach the

private/public boundary in its *gendered* (and also *raced*) form. The dynamics here are complicated, mixing practical, social economic, and symbolic factors.

An ethic of care is threatening in the imagined U.S. public space of supposedly competent, self-sufficient, free individuals who are pictured as enjoying full reciprocity of obligation and entitlement. Care thinking instead demands attention to those who engage in unpaid and low paid dependency work and these are people -- put curtly, women and minorities -- whose labor has been and continues to be exploited within a system of socially restricted choices and opportunities in the U.S. An ethic of care further demands attention to those who are dependent and so rely upon this work. U.S. social and political discourse struggles with inserting the "care-giver" and the "human being needing care" into the citizen role and inserting the continuous human needs for care into the picture of the independent, autonomously rights-wielding citizen as a culturally normative ideal. The culturally normative U.S. citizen is an adult, a classically rational actor, a "man" whose life cycle is not socially premised on child-bearing and child-care, a white person fitted for education that leads to more than menial work (that is suitably done by those of other races), a person with a life planned for security and self-sufficiency who enjoys the social and economic resources to make such plans realistic. The ethics of care can appear alienating and actually distressing to many Americans who want to be that citizen or want to believe they actually are and will continue to be that citizen. It is comforting to picture the dependent as the exception or and the care-giver as someone else. Perhaps it is more alienating and distressing to men than to women given the (growing) gender gaps in polls and in elections where women in the U.S. are significantly more concerned with active government support for social welfare and health care. At least it would seem, put flatly, that while the public sphere of policy and legislation remains overwhelmingly dominated in the U.S. by higher-educated white men, it remains easier to see dependency and the caring labor it requires as someone else's problem so long as it *is* in fact someone else's problem.

Furthermore, when care ethics justifies increased demands on public resources, it collides with the discourse of "costly social problems." When the necessity of responding socially to human

vulnerability and dependency is framed in this way, it expresses resistance to paying for what has been and usually still is free, and otherwise is cheaper than it would be under moderately fair conditions of occupational choice and compensation. Care of the dependent and vulnerable remains commonly done by women as an unpaid full time job or an unpaid double or triple shift in the home in addition to paid labor; or is done as low paid "unskilled" work performed by a disproportionately nonwhite labor force in the workplace (where that workplace is also sometimes someone *e/se's* home, in the case of home care attendants, babysitters, housecleaners).³² These social needs are indeed costly to meet, but the issue is where the cost is to be placed. The discourse of "costly social problems" evinces resistance and resentment to paying a cost that really "should" not be a public "burden," and in which those who constitute the burden are a "problem." I suspect that the criminal justice sector is open to care talk and caring values because there it does not threaten to breach an economic, social, and political barrier that represents and is represented by the feminized and raced version of the "private" sector: unpaid or minimally paid dependency work that can be socially demanded from or socially assigned to women and people of color (who may also be non-citizens). Criminal justice has been a public concern solidly for at least the last century in the U.S.³³ The kind of privatization that tempts a grotesquely overgrown and massively expensive U.S. corrections establishment is the economic lure of offloading corrections to private industries. The loaded associations of the gendered and raced sphere of "private" or "domestic" activity have no place here.³⁴

Finally, if "crime" (in the popular imagination, *violent* crime) encourages us to be anxious about our vulnerability to predators, that vulnerability can be made to seem avoidable if we build enough prisons, pass enough draconian sentencing legislation, hire enough police and give them enough coercive powers. This is perhaps why restorative justice has found uptake in the U.S. mostly in connection with juvenile offenders and with nonviolent adults, even as the incarcerations establishment swells. There remains an interest in keeping people believing that they are vulnerable to violent crime and that more incarceration is the way to limit that vulnerability. This interest is consistent with introducing alternatives for lawbreakers who are not "a menace to society," and perhaps serves even to reinforce

that idea that people are in prison *because* they are dangerous (even as admissions to federal prison now are overwhelmingly for nonviolent violation of drug laws). In any case, this kind of "controllable" vulnerability – incessantly magnified by politicians' rhetoric and the popular press – is very different from the forms of vulnerability and dependency we all cannot avoid, no matter what we build or buy, or whom we bully.

The language of care in its most characteristic applications reminds people of a largely uncontrollable vulnerability, and its implications for dependency and interdependence, that is immensely less disturbing when it remains private in another sense, that is, when it remains not only less socially expensive but also out of sight and out of mind (until it strikes at home). The caring language of restorative justice escapes the charged resistance and the sense of threat carried by care ethics when it is identified as such – *as care ethics* – and applied in the most obvious places. This is, I have suggested, precisely because care ethics unavoidably brings unwelcome reminders that *we are all both responsible for, and in need of, the massive work of caring on which all human societies rest*. U.S. society, the only remaining industrial society without universal health care coverage and with negligible publicly supported provisions for parental or other child care, does not seem ready for a collective public acknowledgment of this truth and its political, social, and personal implications.³⁵

Endnotes

1. Robert Pear, "9 of 10 Nursing Homes in U.S. Lack Adequate Staff, a Government Study Finds," *New York Times*, 18 February 2002, A11.
2. Some of the influential accounts of care ethics I take as paradigmatic are Joan Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993); Selma Sevenhuijsen, *Citizenship and the Ethics of Care: Feminist Considerations on Justice, Morality and Politics* (London and New York: Routledge, 1998); Eva Kittay, *Love's Labor: Essays on Women, Equality, and Dependency* (New York: Routledge, 1999); Sara Ruddick, *Maternal Thinking: Toward a Politics of Peace* (New York: Ballantine Books, 1989); Virginia Held, *Feminist Morality: Transforming Culture, Society, and Politics* (Chicago: University of

Socializing Care: Feminist Ethics and Public Issues, (2006): pg. 145-163. [Publisher Link](#). This article is © Rowman & Littlefield and permission has been granted for this version to appear in e-Publications@Marquette. Rowman & Littlefield does not grant permission for this article to be further copied/distributed or hosted elsewhere without the express permission from Rowman & Littlefield.

Chicago Press, 1993). The two founding accounts are Carol Gilligan, *In A Different Voice: Psychological Theory and Women's Development* (Cambridge, Mass.: Harvard University Press, 1982) and Nell Noddings, *Caring: A Feminine Approach to Ethics and Moral Education* (Berkeley and Los Angeles: University of California Press, 1984). A useful set of readings is found in Virginia Held, ed., *Justice and Care: Essential Readings in Feminist Ethics* (Boulder, Colo.: Westview Press, 1995).

3. Tronto, *Moral Boundaries*, 140. Kittay, *Love's Labor*, 131-32.

4. Amartya Sen, *Development as Freedom* (New York: Anchor Books, 1999), 56-8.

5. Cheshire Calhoun, "Justice, Care, Gender Bias," *Journal of Philosophy* 85 (1988): 451-463.

6. See Joan Tronto's and Berenice Fisher's definition of care as a basis for an ethic of care: "On the most general level, we suggest that caring be viewed as a *species activity that includes everything that we do to maintain, continue, and repair our "world" so that we can live in it as well as possible*. That world includes our bodies, our selves, and our environment, all of which we seek to interweave in a complex, life-sustaining web." From Berenice Fisher and Joan C. Tronto, "Toward a Feminist Theory of Care," in *Circles of Care: Work and Identity in Women's Lives*, ed. Emily Abel and Margaret Nelson (Albany, N.Y.: State University of New York Press, 1991), 40, cited in Tronto, *Moral Boundaries*, 103.

7. See, for example, Eva Kittay's argument for a third principle of justice, in addition to John Rawls's two principles, that acknowledges "our unequal vulnerability in dependency, ...our moral power to respond to others in need, and...the primacy of human relations to happiness and well-being," Kittay, *Love's Labor*, 113.

8. See Tronto on this fragmentation of care the tracks lines of social privilege: those of higher status in gender, race, economic, and citizen hierarchies are associated with the public roles that "take care" of social problems, while the actual work of care-giving is the province of those less powerful in homes and in the workforce, Tronto, *Moral Boundaries*, 112-17. See also Kittay, *Love's Labor*, Chapters 3-5. On the ways in which discussion of needs has been institutionalized within

modern welfare state contexts, and the tendency to shift questions of meeting human needs into questions of how needs-satisfaction can be administered institutionally, see Nancy Fraser, "Talking About Needs: Interpretive Contests as Political Conflicts in Welfare-State Societies," *Ethics* 99 (1989): 291-313.

9. Sevenhuijsen, *Citizenship and the Ethics of Care*, 23.

10. Fiona Robinson, *Globalizing Care: Ethics, Feminist Theory, and International Relations* (Boulder, Colo.: Westview Press, 1999), 46.

11. Eva Kittay's analysis of contemporary discussions of 1990s "welfare reform" in the U.S. is instructive here. See "Policy and a Public Ethic of Care" in Kittay, *Love's Labor*.

12. For a clear account of the emergence of these programs, and some evaluative research on them, see Mark S. Umbreit, Robert Coates, and Ann Warner Roberts, "Cross-National Impact of Restorative Justice Through Mediation and Dialogue," *ICCA Journal on Community Corrections* 8 (1997): 46-50.

13. John Braithwaite, one of the founding figures in restorative justice thinking, gives an overview in the first chapter of his recent book *Restorative Justice and Responsive Regulation* (New York: Oxford University Press, 2002). See also Dennis Sullivan and Larry Tifft, *Restorative Justice: Healing the Foundations of our Everyday Lives* (Monsey, N. Y.: Willow Tree Press, 2001).

14. See, for example, Dennis Sullivan, "Navajo Peacemaking History, Development, and Possibilities for Adjudication-Based Systems of Justice: An Interview with James Zion," *Contemporary Justice Review* 5 (2002): 167-188. For a philosophical reflection on Navajo practice, see Robert Yazzie, "'Life comes from it': Navajo Justice Concepts," *New Mexico Law Review* 24 (1994): 175-190.

15. Russ Immarigeon and Kathleen Daly, "Restorative Justice: Origins, Practices, Contexts, and Challenges," *ICCA Journal on Community Corrections* 8 (1997): 13-18.

16. <<http://www.stop.violence.com>> (23 April 2005) summarizes restorative justice legislation enacted in 29 states, and <http://www.pfm.org//AM/Template.cfm?Section=Justice_Fellowship1> (23 April 2005)<http://www.justicefellowship.org>, lists over 20 kinds

of programs with restorative purposes. See Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottsdale, Pa.: Herald Press, 1995) on the origins of Victim-Offender Reconciliation in an experimental program through the Mennonite Church.

17. Quoted in David Karp, "Harm and Repair: Observing Restorative Justice in Vermont," *Justice Quarterly* 18 (2001): 727-57.

18. David Karp, who has studied the Vermont system, notes that the "restoration" in question can be relatively "thin," involving any positive act directed to a crime victim or affected community (for example, apologies at a distance or community serve), or relatively "thick," when the procedure aims at addressing and repairing the specific harm done to victims or communities, which is typically material, psychological, and moral. Karp, "Harm and Repair," 730-31.

19. This last is the hot spot of restorative practices in the eyes of those who hold that the consistency of treating like cases alike is definitive of justice, and for those who fear that resolution of restorative practice can either be unjustly severe or unjustly slight. These are real problems, but they are not within the scope of my brief discussion here. John Braithwaite concedes that "There can be little doubt that courts provide superior formal guarantees of procedural fairness than conferences," and thinks the answer is on the one hand, constraint of restorative process by human rights guarantees and the right of appeal and to legal representation within restorative contexts, thus forging a "creative interplay between restorative forums and traditional Western courts." See Braithwaite, *Restorative Justice and Responsive Regulation*, 12-16 on human rights, and 164-66 on procedural worries.

20. Howard Zehr gives nicely straightforward statements of the contrast between retributive and restorative modes. Retributive justice: "Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by systematic rules." Restorative Justice: "Crime is a violation of people and relationships. It creates an obligation to make things right. Justice involves the victim, the offender, and the community in a search for solutions which promote repair, reconciliation, and reassurance." See Zehr, *Changing Lenses*, 181.

21. See Braithwaite, *Restorative Justice and Responsive Regulation*, 12, on process and values. See also Heather Strang and John Braithwaite, "Introduction," *Restorative Justice and Civil Society* (New York: Cambridge, 2001).

22. Katherine Beckett and Theodore Sasson, *The Politics of Injustice* (Thousand Oaks, Calif.: Pine Forge Press, 2000), 4. On the continuing growth in prison expenditures, see John M. Broder, "No Hard Time for Prison Budgets," *New York Times*, 19 January 2003, WK5.

23. Beckett and Sasson, *The Politics of Injustice*, 9.

24. Beckett and Sasson, *The Politics of Injustice*, 3. Extensive studies in 1999 and 2000 reported that minority, especially African American but also Hispanic and Latino, youth are many times more likely to be arrested, tried, imprisoned, or tried as adults when juveniles, than whites.

25. For a direct use of care ethics, see J. Pennell and G. Burford, "Widening the Circle: The Family Group Decision Making Project," *Journal of Child and Youth Care* 9 (1994): 1-12, and Charles Barton and Karen van den Broek, "Restorative Justice Conferencing and the Ethic of Care," <http://ethics-justice.org/v2n2/conference.html>, (30 June 1999). Immarigeon and Daly, "Restorative Justice: Origins, Practices, Contexts, and Challenges," cite feminist movement against violence against women and feminist justice theory as contributions. See also Gordon Bazemore and Mara Schiff, *Restorative Community Justice: Repairing Harm and Transforming Communities* (Cincinnati: Anderson Publishing, 2001). Some feminist interventions include C. G. Bowman, "The Arrest Experiments: A Feminist Critique," in *Taking Sides: Clashing Visions on Controversial Issues in Crime and Criminology*, ed. R. Monk (Gilford, Ct.: Dushkin Publishing, 1994); M. K. Harris, "Moving Into the New Millennium: Towards a Feminist Vision of Justice," in *Criminology and Peace-Making*, ed. H. Pepinsky and R. Quinney (Bloomington: Indiana University Press, 1990); F. Heidensohn, "Models of Justice: Portia or Persephone? Some Thoughts on Equality, Fairness and Gender in the Field of Criminal Justice," *International Journal of the Sociology of Law* 14 (1986): 287-98. Kathleen Daly lists as one of several unhelpful "myths" about restorative justice that it is "a 'care' (or feminine) response to crime in comparison to a 'justice' (or masculine) response." My claim does not

embody the falsely universalizing binary of care and justice as "feminine" or "masculine." I focus on care as a value theory that pulls for a certain information base; this interpretation does not load gendered meanings into an ethic of care, and does not oppose care to justice. See Kathleen Daly, "Restorative Justice: the real story," in *A Restorative Justice Reader: Texts, Sources, and Context* (Portland, Oregon: Willan Publishing, 2003).

26. An online 1999 article by Charles Barton and Karen van den Broek, "Restorative Justice Conferencing and the Ethic of Care," <http://ethics-justice.org/v2n2/conference.html>, (30 June 1999), aligns "justice" thinking that invokes "pre-established, universally applicable rules" applied dispassionately to eliminate bias and emotion in achieving consistent, and therefore fair, outcomes as the rationale of court-processing of crime, and care thinking that emphasizes particularity of actors, compassion and attentiveness, the importance of forming and restoring human connections, and openness to non-generalizable outcomes with restorative justice conferencing practice. J. Pennell and G. Burford, "Widening the Circle: The Family Group Decision Making Project," *Journal of Child and Youth Care* 9 (1994): 1-12, use care ethics as the theoretical viewpoint for assessing a family group conference program that targeted domestic violence against women and children.

27. This was most unambiguously the case with New Zealand's comprehensive reform of its juvenile justice system to especially honor and implement Maori values. See Helen Bowen, "Restorative Justice in Aotearoa/New Zealand Background and Training Issues," *ICCA Journal on Community Corrections* 8 (1997): 41-45, and Gabrielle Maxwell and Allison Morris, "Family Group Conferences and Restorative Justice." See also Sullivan, "Navajo Peacemaking..." and Yazzie, "'Life comes from it'..." above on Navajo Peackeeper Courts. Sentencing circles are another case.

28. The most extensive and current study of the meanings of this distinction is Will Kymlicka, *Multicultural Citizenship* (Oxford: Clarendon Press, 1995).

29. On the "theoretical-juridical model" as the master template of 20th century academic moral theory, see my *Moral Understandings: A Feminist Study in Ethics* (New York: Routledge, 1998).

30. I thank Will Kymlicka for pointing this out.

31. The phrase is Joan Tronto's, *Moral Boundaries*, 112.

32. Nor is it any longer an entirely or largely national domestic division of labor that allots caring to women, people of color, or the economically disadvantaged. For the "gendered, raced, and classed" dimensions of caring labor in a global economy, see the Introduction to Barbara Ehrenreich and Arlie Russell Hochschild, *Global Woman: Nannies, Maids, and Sex Workers in the New Economy* (New York: Henry Holt and Company, 2002).

33. Restorative justice advocates like to point out that the "ownership" of crime by the State is a relatively recent development in modern industrial societies. See, for example, Zehr, *Changing Lenses*, Chapter 7, "Community Justice: The Historical Alternative;" Braithwaite, *Restorative Justice and Responsive Regulation*, Chapter 1, "The Fall and Rise of Restorative Justice;" and Nils Christie, "Conflicts as Property," in *A Restorative Justice Reader: Text, Sources, Contexts* (Portland, Oregon: Willan Publishing, 2003).

34. While it is common to read and hear of "the" private sphere, it is not obvious that there is one such sphere, and I am assuming here that there is not. Rather there are different lines of distinction along which affairs can be sorted into "public" and "private," and gender in U.S. society is one such constitutive dimension that both defines and is defined by a particular way of marking affairs as "private."

35. An earlier version of this paper was originally prepared as an invited contribution to a Conference on Ethics and Public Policy sponsored by the Netherlands Organization for Scientific Research (NWO), held in Utrecht in May, 2003. I thank the NWO for its sponsorship of the conference, and I thank those present at that presentation, including commentators Henk Manschott and Marian Verkerk, for their observations.